

**STATE OF MICHIGAN
COURT OF APPEALS**



**MEMORANDUM
FOR COURT USE ONLY**

TO Michigan Supreme Court
FROM Case Management Work Group
SUBJECT Summary Disposition Fast Track

DATE October 6, 2006

I. Introduction. In November 2003, the Michigan Supreme Court directed the Court of Appeals to develop a plan to reduce delay in the management of civil cases. Then-Chief Justice Corrigan and Chief Judge Whitbeck jointly appointed members of the bench and the appellate bar to staff this effort. The recommendations of the Case Management Work Group were released in February of 2004 and are accessible on the Court of Appeals' website.¹

II. Administrative Order 2004-5. Following the Work Group's recommendations, the Michigan Supreme Court issued Administrative Order 2004-5² on October 5, 2004. The AO authorized the Court of Appeals to conduct a two-year experiment, commencing January 1, 2005, with an expedited track specifically for appeals from trial court orders granting or denying summary disposition. The ultimate goal of the experiment was to receive, process, and decide such appeals within 180 days of filing. The experiment, which is most commonly referred to as the *SD Track*, allows roughly 90 days for the practitioners to brief the cases and secure the lower court records and another 90 days or so for the Court to review the briefs and records, hear oral argument (if any) and issue opinions. The AO directs the Work Group to provide written updates on the experiment at the end of one year³ and after eighteen months. According to the AO, the Supreme Court will "evaluate expedited processing of summary disposition appeals to determine whether the procedure will be discontinued, changed, or continued" at the end of the two-year pilot period.

III. Amendment to the AO. On October 28, 2005, the Work Group proposed certain changes to the AO to simplify the presentation and processing of SD Track cases during record production and briefing.⁴ The Michigan Supreme Court adopted the changes in Amended Administrative Order 2004-5, effective January 1, 2006.⁵

IV. Experiment at Eighteen Months. In a number of ways, the SD Track has been highly successful. One indication of that success is the frequency with which litigants have used it. In 2005,

¹ http://courtofappeals.mijud.net/pdf/First_Report_Of_Case_Management_Workgroup1.pdf.

² The AO is available online at: <http://courts.michigan.gov/supremecourt/Resources/Administrative/AO-2004-5.pdf>.

³ On February 28, 2006, the Work Group filed its One-Year Report on the SD Track. This report is accessible at: <http://courtofappeals.mijud.net/pdf/CMWG%201-Yr%20Report%202-28-2006.pdf>.

⁴ This proposal is accessible online at: <http://courtofappeals.mijud.net/pdf/Proposal%20to%20Amend%20AO%202004-5.pdf>.

⁵ The amended AO is accessible online at: <http://courts.michigan.gov/supremecourt/Resources/Administrative/2004-5.pdf>.

a total of 1,594 cases went on the SD Track. The Court projects for the full year of 2006 that 1,530 SD Track appeals will be filed. Further, transcripts and briefs were timely filed in the significant majority of cases, motions to remove were relatively rare, and motions to extend time for briefing were liberally granted by the Court. Particularly with the changes contained in the amended AO, the SD Track has proven to be reasonably easy to administer and its popularity among litigants is a useful illustration of the value of prompt resolution of appeals.

A. Motions to Remove. Attorneys filed 75 motions to remove in 2005, compared to 30 in the first six months of 2006. On a percentage basis, the Court received motions to remove in 4.7% of the SD Track cases filed in 2005, compared to 3.2% of those filed in the first six months of 2006. One question that arises here is whether attorneys have decided not to seek to remove SD Track cases because they know or anticipate that their clients prefer the expedited pace regardless of the burden on the attorney and on the Court.

Although the AO allows the Court to remove cases administratively (that is, without a party's motion), the Court has only exercised that authority in a relatively few cases. Instead, the Court has allowed complex or multi-issue appeals to remain on the SD Track even when screening revealed that they were overly complex because the Court concluded that (at least during the experimental phase) it should make every effort to meet the Court's portion of the timeline in exchange for the parties having met their deadlines. In the first six months of 2006, the Court processed five administrative removals compared with 16 administrative removals in 2005.

B. Transcripts are being filed timelier in 2006 (95%) than in 2005 (90%). Transcript waivers (by stipulation) have been extremely rare. Thirty-seven appellants waived transcripts in 2005, compared with stipulated waivers in only two appeals in the first six months of 2006.

C. Motions to Extend Briefing. The Court received 129 motions to extend briefing in the first six months of 2006 compared to 243 motions overall in 2005. Some of this increase may be due to the fact that motions were necessarily filed in early 2006 for cases that were initiated in late 2005, while the same cannot be true in early 2005 (there were no SD Track appeals pending from 2004). The Court's grant rate in both years is not materially different: 87.2% granted in 2005 compared with 89.1% granted in the first six months of 2006.

D. Appellants' Briefs are being timely filed at roughly the same rate in the first six months of 2006 (86.1%) compared to 2005 (84.0%). The average page count has increased very slightly from 18.6 pages in 2005 to 19.7 pages in 2006.

E. Appellees' Briefs are also being timely filed at about the same rate in the first six months of 2006 (89.9%) compared to 2005 (89.1%). And the average page count has increased very slightly from 18.0 pages in 2005 to 19.5 pages in 2006.

F. Post Briefing. Due to the fact that the Court is in the second year of the SD Track, it will necessarily see more SD Track appeals submitted to case call panels in 2006 than in 2005. The percentage submitted on summary panels compared to regular panels is dropping: 37.8% placed on summary panels in 2005 compared with 29.3% placed on summary panels in the first six months of 2006.

G. Timeline Goals. To a certain extent, the SD Track has become a victim of its own success. Its very popularity among litigants has meant that it has been utilized with greater frequency than was originally anticipated. For example, in 2005 the Court processed about 190 more cases on the SD Track than the Work Group anticipated based on the average number of such appeals that had been posted in the previous three years. While the Court projects fewer appeals in 2006 than in 2005,⁶ the fact remains that, with no increase in staffing resources and an unanticipated increase in SD Track filings, the timeline for the issuance of dispositive orders or opinions has begun to lengthen out. Overall, the time to disposition for the *opinion* cases on the SD Track has increased from an average of 173 days in 2005 to an average of 216 days through the first six months of 2006.⁷ The bulk of the increase has occurred in the *Intake* and *Warehouse* stages, with the former increasing from 73 days at the end of 2005 to 82 days in the first six months of 2006, and the latter increasing from 43 days at the end of 2005 to 75 days in the first six months of 2006. The increase in the *Intake* stage may be largely the result of the expanded time for briefing allowed by the amended AO. The times in both the *Research* and *Judicial* stages have remained fairly stable (no increase in *Research* and only a two-day increase in *Judicial*).

The pace at which the Court disposes of SD Track cases by orders within 180 days has also declined from 2005 to 2006. In 2005, the Court issued dispositive orders within 180 days of filing in 98% of the cases. In the first six months of 2006, the Court issued dispositive orders within 180 days in 89% of the cases.

H. Difficulty of SD Track Cases. Another factor has also contributed to the delay in processing SD Track cases. Many cases on the SD Track have proven to be more complex than the Work Group contemplated. The table to the right shows the breakdown of SD Track cases by day evaluation.⁸ Almost one-third of the screened SD Track cases have evaluations that exceed four days in difficulty. One- to three-day cases are generally routine appeals that can usually be submitted on summary panels without oral argument. Four-day cases are in a transitional range but trend toward being easier cases. Cases evaluated at five or more days are harder cases requiring a substantial investment of research and chambers time to dispose. When the SD Track was first conceived, the Court members of the

Day Evals	# of Cases	% of Cases	Cumulative Percent
1	20	1.9%	
2	254	23.5%	25.3%
3	233	21.6%	46.9%
4	228	21.1%	68.0%
5	182	16.8%	84.8%
6	66	6.1%	90.9%
7	46	4.3%	95.2%
8	25	2.3%	97.5%
9	13	1.2%	98.7%
10	11	1.0%	99.7%
11	1	0.1%	99.8%
12	2	0.2%	100.0%
	1081		

⁶ If this reduced figure is not solely reflective of a natural settling, it may also be due to the Court's inability to meet the 180-day goal from filing to disposition. That is, parties who may have previously filed appeals because decisions would be issued within 6 months may now be less likely to appeal because the Court is reaching the 180-day goal in only 26.5% of the SD Track cases.

⁷ Data from the third quarter of 2006 indicates that this delay is continuing to lengthen. As of the week ending September 8, 2006, time to disposition for SD Track cases disposed in the *third quarter* of 2006 stood at an average of 238 days, or an additional 16 days on average compared to the end of the second quarter.

⁸ Day evaluations are assessments that are made at the time the cases are sent to the research division for preparation of research reports; they are expressed in terms of the number of days that the research attorneys should need to prepare reports in the cases. Day evaluations are generally based on the type of case, the number and complexity of the issues, and the size of the transcript and the record.

Work Group envisioned that the vast majority of the cases on the Track would fall into the one-to four-day range.

Day Evals	Average Pgs Per AT Brief
1	10.6
2	14.2
3	17.7
4	20.9
5	23.4
6	25.7
7	27.1
8	31.4
9	33.4
10	30.4
11	23.0
12	35.0
Grand Total	20.0

Further, there is significant congruence between cases in which the appellants' briefs exceeded 20 pages and day evaluations that exceed four days. The table to the left shows the breakdown of day evaluation by the average page lengths of the appellants' briefs. Although brief length is not a characteristic that is specifically used by the screener to determine day evaluations, SD Track cases that were evaluated at one to three days contain appellants' briefs that average less than 18 pages. SD Track cases evaluated at four days contain briefs that average 20.9 pages. And SD Track cases evaluated above four days contain appellants' briefs that average progressively more pages, up to an average of 35 pages for the longest (12-day) cases.

Finally, the Court's day evaluation data indicate that the case type classification codes (that is, the two-letter codes applied to the trial court case number according to the type of lawsuit pursuant to MCR 8.117) are reasonable predictors of cases that are likely to be evaluated at five days or more. The table to the right illustrates the day evaluations and the effective workloads of cases by case type classification codes. The number of cases that are evaluated at more than four days in the classification represents a substantial work burden compared to those of the same type that are evaluated at four days or less. The block of cases that are represented by these case types comprises 34% of the cases that the research

Case Type Description	Type	Total Cases	Cases at 1-4 Days	Cases at > 4 days	% of Cases at > 4 days	Days of Workload at 1-4 Days	Days of Workload at > 4 Days	% Workload at > 4 Days
Appeal to Circuit - Agency	AA	2	0	2	100.0%	0	11	100.0%
Circuit - Super Control	AS	1	0	1	100.0%	0	10	100.0%
Circuit - Writs	AW	7	4	3	42.9%	15	19	55.9%
Civil - Business Claims	CB	5	3	2	40.0%	8	16	66.7%
Civil - Condemnation	CC	1	0	1	100.0%	0	5	100.0%
Civil - Employmnt Discrim	CD	21	8	13	61.9%	20	77	79.4%
Civil - Housing & Real Est	CH	76	42	34	44.7%	121	213	63.8%
Civil - Labor Relations	CL	23	14	9	39.1%	39	58	59.8%
Civil - Antitrust, Franchising	CP	3	1	2	66.7%	4	11	73.3%
Probate - Unsuperv'd Admin	DE	3	1	2	66.7%	3	10	76.9%
Ct of Clms - Contracts	MK	2	1	1	50.0%	3	8	72.7%
Ct of Clms - Const'l Claims	MM	5	2	3	60.0%	7	22	75.9%
Ct of Clms - Tax Related	MT	12	3	9	75.0%	10	46	82.1%
Ct of Clms - Damage Suits	MZ	10	5	5	50.0%	11	29	72.5%
Prop Damage - Auto Neg	ND	1	0	1	100.0%	0	5	100.0%
Civil - Medical Malpractice	NH	111	64	47	42.3%	200	293	59.4%
Civil - Other Prof'l Malp	NM	30	18	12	40.0%	47	65	58.0%
Civil - Dramshop	NS	4	2	2	50.0%	6	10	62.5%
Civil - Other Damage Suits	NZ	40	18	22	55.0%	53	129	70.9%
Civil - Misc Proceedings	PZ	2	1	1	50.0%	4	5	55.6%
Family - Transfer URESA	TI	1	0	1	100.0%	0	5	100.0%
Probate - Trust Inter Vivos	TV	9	3	6	66.7%	12	41	77.4%
Total Cases in This Group		369						
Total Cases Screened		1081						
Percentage From This Group		34.1%						

division screened for the SD Track. The classification type code is known at the earliest stage of the appeal, and might serve as a marker that could be used to reduce the overall size of the caseload on this track, either through administrative removal or by providing notice to the parties that such cases are apt to be inappropriate for the SD Track.

V. Alternatives to Consider. In light of the data presented above, the Court members of the Work Group feel there are two primary alternatives to consider for the future.

1. Continue the SD Track with Modifications:

A. Identify and Publish for the Bar the Attributes of Inappropriate Cases. To assist the Bar in identifying those cases that are appropriate for the SD Track, the Court could publish those attributes typical of cases in the one- to four-day range. These include the following:

- (1). Size of the lower court record - one to three moderately sized lower court files; less than 100 pages of transcripts from the relevant hearings or depositions.
- (2). Issues raised on appeal - one to four issues that do not involve (i) matters of first impression, including the first-time construction of a Michigan statute or court rule, or (ii) complex facts or law. Additional issues may be allowed if they are merely separate factual challenges involving the same general area of law.
- (3). Case Type Classification Code - Cases that are often factually or legally complex, and thus inappropriate for the SD Track, could be identified by case type classification code (see § IV[H], *supra*).
- (4). Brief Length – Cases that require more than 25 pages of brief are less likely to be appropriate for the summary disposition track.

B. Allow Motions to Remove Cases from the SD Track Without a Fee. To encourage the Bar to seek removal of cases that do not have the appropriate attributes of SD Track cases or that cannot be briefed within the 25-page limit, the Court should accept motions to remove without a fee. Under the current AO, a party seeking to remove a case from the SD Track must file a motion and pay the requisite motion fee. The motion could be made by either party but must identify the specific reasons for seeking removal.

2. Discontinue the SD Track. Given that the Court has been unable to meet the 180-day target under the AO with current staff and that funds to hire additional staff are unlikely for at least twelve months, it is arguable that the SD Track should be discontinued when the AO expires at the end of 2006. However, it appears that, despite the Court's present inability to meet the time deadlines, the track is still very popular with the Bar.

VI. Recommendation of the Case Management Work Group. Despite the Court's inability to meet the time deadlines of the AO, the Case Management Work Group recommends continuing with a modified SD Track because it has been so well received by the Bar and because such a modified SD Track may contribute to the Court's goal of disposing of 95% of its filings within eighteen months. Therefore, the Work Group recommends the following:

- *Continue the SD Track for another one--year period using the existing timelines for disposition.*
- *Identify and publish the characteristics and attributes of typical cases in the one- to four-day range so that practitioners know with some certainty what types of cases are appropriate for the SD Track.*

- *Do not charge a fee for motions to remove cases from the SD Track.*
- *Administratively remove inappropriate cases from the SD Track.*

Order

ADM File Nos. 2002-34
2002-44,

Second Amended Administrative Order No. 2004-5

Expedited Summary Disposition
Docket in the Court of Appeals

Pursuant to Administrative Order No. 2004-5, this Court adopted an expedited summary disposition docket in the Court of Appeals to take effect on January 1, 2005, and to expire on December 31, 2006. On December 21, 2005, Amended Administrative Order 2004-5 was adopted to take effect on January 1, 2006. We now order that the expedited summary disposition docket continue in effect, as modified *infra*, for an additional one-year period to expire on December 31, 2007 ~~twelve-month period.~~

1. Applicability. This second amended administrative order applies to appeals filed on or after January 1, 2007~~6~~, arising solely from orders granting or denying motions for summary disposition under MCR 2.116. Unless otherwise removed by order of the Court of Appeals, these appeals shall ~~are to~~ be placed on an expedited appeal track under which they shall generally be briefed, argued, and disposed of within six months of filing. A motion to remove is required for a party to divert such an appeals to the standard appeal track.
2. Time Requirements. Appeals by right or by leave in cases covered by this second amended order must be taken within the time stated in MCR 7.204 or MCR 7.205. Claims of cross-appeal must be filed within the time stated in MCR 7.207 ~~14 days after the claim of appeal is filed with the Court of Appeals or served on the cross-appellant, whichever is later, or within 14 days after the clerk certifies the order granting leave to appeal.~~
3. Trial Court Orders on Motions for Summary Disposition. If the trial court concludes that summary disposition is warranted under MCR 2.116(C), the court shall render judgment without delay in an order that specifies the subsection of MCR 2.116(C) under which the judgment is entered.
4. Claim of Appeal—Form of Filing. With the following exceptions, a claim of appeal filed under this order shall conform in all respects with the requirements of MCR 7.204.
 - (A) A docketing statement is not ~~be required as long as the case proceeds on the summary disposition track unless the case is removed by order prior to the filing of the appellant's brief~~

- (B) When the claim of appeal is filed, it shall be accompanied by:
- (1) evidence that the transcript of the hearing(s) on the motion for summary disposition has been ordered, or
 - (2) a statement that there is no record to transcribe, or
 - (3) the stipulation of the parties that the transcript has been waived.

Failure to file one of the above three documents with the claim of appeal will *not* toll subsequent filing deadlines for transcripts or briefs. Sustained failure to provide the required documentation may result in dismissal of the appeal under MCR 7.201(B)(3), as long as the Court of Appeals provides a minimum 7-day warning.

5. Application for Leave—Form of Filing. An application for leave to appeal, or an answer to an application for leave to appeal, filed under this second amended administrative order shall conform in all pertinent respects with the requirements of MCR 7.205. At the time an application or an answer is filed, the filing party must provide the Court of Appeals with 5 copies of that party's trial court summary disposition motion or response, brief, and appendices.
6. Claim of Cross-Appeal. ~~Subject to the filing deadline contained in section 2, a~~ A claim of cross-appeal filed under this second amended administrative order shall conform in all ~~other~~ pertinent respects with the requirements of MCR 7.207. Upon the filing of a claim of cross appeal in an appeal proceeding on the summary disposition track, the Court will remove the case from the track as provided in section 7, if it determines that the case is no longer appropriate for the track.
7. Removal from Summary Disposition Track. A party may file a motion, ~~or the Court may act sua sponte,~~ to remove ~~the a~~ case from the summary disposition track to the standard track.
 - (A) Time to File. A motion to remove may be filed by any party at any time. ~~However, filing of the motion most closely in time to discovery of the basis for removal will maximize the likelihood that the motion will be granted.~~
 - (B) Form. Motions to remove shall concisely state the basis for removal, and must be in the form prescribed by the Court of Appeals. ~~This form shall include a statement advising whether the appellee is expected to oppose the motion.~~ Factors that weigh in favor of removal include:
 - (1) The length of one or more briefs exceeds 25 pages; removal of the case from the summary disposition track becomes more likely as the briefs approach the 35-page limit under Sec. 9(C),
 - (2) The lower court record consists of more than three moderately sized files and more than 100 pages of transcripts from the relevant hearing(s) and deposition(s),

- (3) There are more than four issues to be decided,
- (4) One or more of the issues are matters of first impression, including the first interpretation of a statute, or are factually or legally complex.
- (C) Fee. No fee is required for a motion to remove from the summary disposition track.
- (~~C~~-D) Answer. An answer to a motion to remove must be filed within 7 days after service of the motion. ~~If applicable, the answer should state whether the appellee is expected to file a claim of cross appeal.~~
- (~~D~~-E) Disposition. Motions to remove shall be liberally granted. Within 14 days after the filing of the motion to remove, the Court of Appeals shall issue an order disposing of the motion and setting the time for further filings, if any, in the case. The time for further filings in the case will commence on the date of certification of the order on the motion.
- (~~E~~-F) Docketing Statement. If the case is removed from the summary disposition track prior to the filing of the appellant's brief, a docketing statement must be filed within 14 days after the date of certification of the order on the motion.
- (~~F~~-G) Administrative Removal. The Court of Appeals will ~~may~~ remove a case from the summary disposition track ~~at any time,~~ on its own motion, if it appears to the Court that the case is not an appropriate candidate for processing under this second amended administrative order. Such administrative removal may be made at any time, even after the parties' briefs are filed.
- (~~G~~-H) Effect of Removal. If the Court of Appeals removes a case from the summary disposition track prior to the filing of the appellant's brief, the parties are entitled to file briefs in accordance with the time requirements and page limitations set forth in MCR 7.212. New or supplemental briefs shall not be permitted in cases removed from the summary disposition track after the filing of the parties' briefs except upon motion of a party and further order of the Court. the order shall state whether, and the deadlines by which, the parties are entitled to file briefs in accordance with the time and page limitations set forth in MCR 7.212.

8. Transcript—Production for Purposes of Appeal.

- (A) Appellant.
 - (1) The appellant must order the transcript of the hearing(s) on the motion for summary disposition before or contemporaneously with the filing of the claim of appeal or application for leave to appeal, unless there is no record to transcribe or all parties to the appeal stipulate that the transcript is unnecessary.

- (2) Evidence that the transcript was ordered must be filed with the claim of appeal or application for leave to appeal. Appropriate evidence of the ordering includes (but is not limited to) the following:
 - (a) a letter to the specific court reporter requesting the specific hearing dates and enclosing any required deposit; or
 - (b) an “Appeal Transcript, Demand, Order and Acknowledgment” form, or
 - (c) a Court reporter or recorder’s certificate.
 - (3) If the transcript is not timely filed, the appellant or an appellee may file an appropriate motion with the Court of Appeals at any time. Avoiding undue delay in filing the motion under the circumstances of the case, and concisely stating the specific basis for it, will maximize the likelihood that the motion will be granted.
 - (4) If an appropriate motion is filed, the order disposing of such motion shall state the time for filing any outstanding brief(s).
 - (5) Absent an order of the Court of Appeals that resets the time, the appellant's brief will be due as provided in section 9(B)(1), regardless of whether the ordered transcript is timely filed.~~the time for filing the appellant's brief will commence on the date the claim of appeal was filed or the order granting leave was certified. In such event, the appellant's brief shall be filed within 56 days after the claim of appeal was filed or 28 days after certification of the order granting leave to appeal. See~~
- (B) Appellee.
- (1) If the transcript has been ordered by the appellant but is not filed by the time the appellant’s brief is served on an appellee, the appellee may file an appropriate motion with the Court of Appeals. Avoiding undue delay in filing the motion under the circumstances of the case, and concisely stating the specific basis for it, will maximize the likelihood that the motion will be granted.
 - (2) If an appropriate motion is filed, the order shall state the time for filing any outstanding appellee briefs.
- (C) Court Reporter. The court reporter or recorder shall file the transcript with the trial court or tribunal within 28 days after it is ordered by either the appellant or the appellee. The court reporter or recorder shall conform in all other respects with the requirements of MCR 7.210.
- (D) Transcript Fee. The court reporter or recorder shall be entitled to the sum of \$3.00 per original page and 50 cents per page for each copy for transcripts

ordered in appeals processed under the expedited docket, if the transcript is filed within 28 days after it was ordered. If the court reporter or recorder does not file the transcript within 28 days after it was ordered, the rate will remain \$1.75 per original page and 30 cents per page for each transcript, as set by MCL 600.2543.

9. Briefs on Appeal.

(A) With the following exceptions, the parties' briefs shall conform to the requirements of MCR 7.212.

(B) Time For Filing.

- (1) In appeals by right, the appellant's brief shall be filed within 56 days after the claim of appeal is filed, or as ordered by the Court. In appeals by leave, the appellant's brief shall be filed within 28 days after the order granting leave is certified, or as ordered by the Court. In appeals by leave, the appellant may rely on the application for leave to appeal rather than filing a separate brief by timely filing 5 copies of the application for leave to appeal with a new cover page indicating that the appellant is relying on the application in lieu of filing a brief on appeal. The cover page should indicate whether oral argument is requested or is not requested. MCR 7.212(C)(1).
- (2) The appellee's brief shall be filed within 28 days after the appellant's brief is served on the appellee, or as ordered by the Court. In appeals by leave, the appellee may rely on the answer to the application for leave to appeal rather than filing a separate brief by timely filing 5 copies of the answer to the application for leave to appeal with a new cover page indicating that the appellee is relying on the answer to the application in lieu of filing a brief on appeal. The cover page should indicate whether oral argument is requested or is not requested. MCR 7.212(C)(1) and (D)(1).
- (3) Time for filing any party's brief may be extended for 14 days on motion for good cause shown, ~~filed within the original brief filing period~~. If the motion is filed by the appellant within the original brief-filing period, the motion will toll the time for any sanctions for untimely briefs. A motion may include a statement from opposing counsel that counsel does not oppose the 14-day extension. A motion to extend the time for filing a brief will be submitted for disposition forthwith; opposing counsel need not file an answer.
- (4) If the appellant's brief is not filed within 7 days after the date due, the Court of Appeals shall issue an order assessing costs and warning the appellant that the case will be dismissed if the brief is not filed within ~~14~~ 7 days after the clerk's certification of the order deadline. If the brief is

not filed within that ~~14~~7-day period, the Court of Appeals shall issue an order that dismisses the appeal and that may assess additional costs.

- (C) Length and Form. Briefs filed under this second amended administrative order are limited to 35 pages, double-spaced, exclusive of tables, indexes, and appendices.

At the time each brief is filed, the filing party must provide the Court of Appeals with that party's trial court summary disposition motion or response, brief, and appendices. Failure to file these documents at the time of filing the appellant's brief will not extend the time to file the appellee's brief, ~~however. Provided such omission is noted appropriately in the appellee's brief, the appellee may omit these appendices if they were included with the appellant's brief.~~ If the appellant filed copies of the appellee's summary disposition response, brief, and appendices, the appellee may omit these documents provided that appellee notes the omission prominently on the title page of the appellee's brief.

- (D) A reply brief may be filed within 14 days after the appellee's brief is served on the appellant, and is limited to 5 pages, double-spaced, exclusive of tables, indexes, and appendices.

10. Record on Appeal. The Court of Appeals shall request the record on appeal from the trial court or tribunal clerk 28 days after jurisdiction has been confirmed and material filing deficiencies have been corrected. The trial court or tribunal clerk shall transmit the record as directed in MCR 7.210(G).

11. Notice of Cases. Within 7 days after the filing of the appellee's brief, or after the expiration of the time for filing the appellee's brief, the clerk shall notify the parties that the case will be submitted as a "calendar case" on the summary disposition track.

12. Decision of the Court. The opinion or order of the panel shall be issued no later than 35 days after submission of the case to, or oral argument before, a panel of judges for final disposition.

This amended order will remain in effect until December 31, ~~2007~~6, during which time the Court of Appeals Work Group will monitor the expedited docket program. If, at any time during that monitoring process, it becomes apparent to the work group that procedural aspects of the program need to be modified, the group is encouraged to seek authorization from this Court to implement modifications. The work group will provide this Court with a written report by November 1, 2007, for this Court's use ~~in before the one year and eighteen month anniversaries of the program's implementation. At the end of the two year pilot period, this Court will evaluating~~ e expedited processing of summary disposition appeals to determine whether the procedure will be discontinued, changed, or continued.

Original Staff Comment: This is a new procedure requested by the Court of Appeals for the processing of appeals from orders granting or denying summary disposition. The new procedure applies to appeals filed after January 1, 2005. The procedure will be in effect for a two-year pilot period with ongoing monitoring by the delay reduction work group. That group will provide updates to the Court before the one-year and eighteen-month anniversaries of the pilot period. The group is authorized, during the two-year pilot period, to seek from the Court modification of the expedited docket procedures.

The transcript rate is authorized by statute. 2004 PA 328.

The Court of Appeals offered the following explanation of the expedited docket procedure:

The Court of Appeals estimates that summary disposition appeals make up about 50% of the Court's nonpriority civil cases. The procedure proposed by the Court's Case Management Work Group and announced in this administrative order is structured to facilitate disposition of eligible appeals within about 180 days after filing with the Court of Appeals. The work group's report can be accessed on the Court of Appeals website at <http://courtofappeals.mjud.net/resources/specialproj.htm>.

The procedure announced here is intended to apply to appeals arising solely from orders on motions for summary disposition. Orders that reference other issues between the parties will not be eligible for this track. If an eligible appeal is deemed to be inappropriate for the expedited docket, the Court can remove it, either on its own motion or on motion of one or both of the parties. Such motions must be in the form prescribed by the Court of Appeals. See <http://courtofappeals.mjud.net/resources/forms.htm>.

The procedure encourages parties to evaluate whether a transcript of hearing(s) on the motion would be helpful on appeal. If little was stated on the record, or there is nothing to be gained from the transcript, it can be waived. In such cases, the appellant's brief (accompanied by the appellant's trial court motion, brief, and appendices) will be due within 28 days after filing the claim of appeal or entry of an order granting leave to appeal. If the transcript is ordered, it will be due within 28 days, with the appellant's brief due 28 days later. The appellee's brief (accompanied by its trial court motion, brief, and appendices) will be due 21 days from service of the appellant's brief. Motions to extend the time for filing briefs will be granted only on good cause shown and, generally, only for a maximum of 14 days. As a general matter, good cause will be limited to unexpected events that directly affect the ability to timely file the brief. When the motion is premised on work load considerations, at a minimum the motion should identify the cases and the courts in which filing deadlines are converging and specify the least amount of time that would be required to file the brief. Once briefing has been completed, the case will be referred to the Court's research attorneys for an expedited review and it will then be submitted to a panel of judges for disposition.

The staff comment is not an authoritative construction by the Court.

Amended AO - Staff Comment: The amendments require an appellant to order the transcripts or the preparation of transcripts may be waived by stipulation. Evidence of ordering the transcripts must be filed with the claim of appeal or application for leave to appeal. Provisions also are added to allow appropriate motions if ordered transcripts are not timely filed. If the transcript was not filed by the time the appellant's brief was served on multiple appellees, only one appellee needs to file an appropriate motion. The order on the motion will state the deadline for filing *any* outstanding briefs.

The amendments identify the trial court documents that must be appended to applications for leave to appeal and answers filed in response. A party may file a motion to remove a case from the expedited summary disposition docket at any time, not just within a narrow time period. The amendments require the order of removal to state whether, and the deadlines by which, parties may file standard briefs.

The amendments provide that an appellant's brief will be due in 56 days from the claim of appeal or 28 days from the order granting leave to appeal. An appellee's brief will be due in 28 days from service of the appellant's brief. The amendments allow an appellee to omit appendices if the documents were appended to the appellant's brief.

The amendments delete many filing deadlines for motion practice under the rule. Instead, pertinent provisions indicate that filing a motion most closely in time to discovery of the basis for it will maximize the likelihood that it will be granted.

The staff comment is not an authoritative construction by the Court.

Second Amended AO - Staff Comment: After 18 months' experience with the expedited track, the Case Management Work Group has reviewed Court data indicating that the expedited track has attracted substantially more filings than had been projected and that only 29% of the expedited track cases are being disposed within 180 days of filing. Court data also indicates that roughly 30% of the cases on the expedited track are quantifiably more difficult cases than the Work Group had anticipated would be filed on the track.

In the early months of the program, the Court made a significant effort to discourage parties and attorneys from filing motions to remove cases from the track. Further, although the original and amended AO authorized the Court to administratively remove cases from the track at any time, in fact the Court rarely exercised that authority because of a perception that it would be unfair to remove a case that the parties and attorneys had succeeded in briefing on the shortened timeline. These two policies undoubtedly led to the large number of non-routine appeals that continued on the track from filing to disposition.

Now, in an effort to continue to provide practitioners and parties with a properly functioning expedited track for processing *routine* appeals from orders granting or denying summary disposition, the Work Group proposes to modify the track to facilitate motions to remove so that cases that are inappropriate for the track can be diverted to the standard track as easily as possible. Further, the Court will also more actively exercise its existing authority to remove cases that are too complex for expedited processing.

As standards for determining whether a case should be removed from the track, the second amended AO states that parties and practitioners should focus on markers such as:

- Brief Length – one or more of the briefs are more than 25 pages in length.
- Lower Court Record – there are more than one to three moderately sized lower court files and more than 100 pages of transcript from the relevant motion hearing(s) and deposition(s).
- Issues Raised on Appeal – there are more than four issues and one or more of the issues involve (i) matters of first impression, including the first-time construction of a Michigan statute or court rule, and (ii) complex facts or law. Additional issues may be allowed if they are merely separate factual challenges involving the same general area of law.

Further, the Court of Appeals notes that Case Type Classification Codes also offer some guidance in this area. Summary disposition appeals in cases that fall within one of the following case type classification codes have often proven to be factually or legally complex, and thus may be inappropriate for the track: AA; AS; AW; CB; CD; CH; CL; CP; DE; MK; MM; MT; MZ; ND; NS; NZ; PZ; TI; TV.

In more specific detail, the following changes are proposed in the second amended AO:

1. The second amended AO will run for a period of 12 months from January 2007 through December 2007.
2. The second amended AO will apply to cases filed on or after January 1, 2007. Note, however, that qualifying SD applications for leave to appeal that are pending on January 1 can continue to be ordered onto the track by the panel if leave is granted.
3. The time for filing a claim of cross appeal is changed from 14 days to 21 days to conform with MCR 7.207.
4. A motion to remove from the track may still be filed by any party, but no motion fee will be required. As noted above, the second amended AO recites specific criteria to be applied by parties and attorneys in making this request that are derived from case data gathered in the first 18 months of the experimental program. These criteria reflect quantifiable differences between routine and non-routine appeals from orders on SD motions. Parties and attorneys are urged to carefully apply these criteria so that non-routine cases, which are inappropriate for expedited processing by the Court, are removed from the track as early as possible in each appeal.
5. Absent a party's motion to remove, the Court will exercise its administrative removal authority at any time, even if the determination cannot be made until after the parties have filed their briefs. This authority is essential to the Court's ability to manage the expedited track so that routine SD appeals can be disposed within 180 days of filing.
6. The time for filing appellant's brief that was previously stated in Section 8(A)(5), Transcript Production, has been replaced with a cross reference to the primary statement of time for filing in Section 9(B)(1), concerning Briefs on Appeal.
7. Under the current AO, if appellant's brief is not filed within 7 days after the due date, and a warning order is issued under Sec. 9(B)(4), the order must direct that the brief be filed within 14 days of the original deadline, more than 7 days of which have already elapsed by operation of the provision. The proposed amendment will provide appellant with 7 days from the date of the order in which to file the brief and avoid dismissal.
8. Briefs filed under the second amended AO are still limited to 35 pages. However, the Court of Appeals notes that case data gathered in the first 18 months of the experimental program indicates that appellants' briefs in the bulk of the non-routine SD appeals exceeded an average of 20-21 pages in length. The most complex appeals averaged 35 pages. Thus, one of the removal factors listed in Section 7(B) is that the length of one or both briefs exceeds 25 pages. In the Court's view, a case that cannot be briefed in 25 pages is *usually* not appropriate for continued placement on the track.

9. Briefs on appeal must be accompanied by the filing party's trial court SD documents. Appellee can omit these appendices if they were filed by appellant, but appellee must note the basis for the omission on the title page of its brief.